

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**ZEICHNER, ELLMAN & KRAUSE, LLP,
Plaintiff and Interpleader Plaintiff,**

v.

**KATHY COKUS, Defendant and Interpleader
Defendant, and OCTAVIO PENA, Interpleader
Defendant.**

No. 07-CIV-9521

**DECLARATION OF GEORGE
BOCHETTO IN SUPPORT OF
CROSS-MOTION TO DISMISS
FOR LACK OF DIVERSITY
JURISDICTION AND MOTION
TO DISMISS DUE TO
PENDENCY OF PRIOR ACTION
AND OPPOSITION TO CROSS-
MOTION TO DEPOSIT FUNDS**

George Bochetto hereby declares under penalty of perjury:

1. I am a principal in the firm of Bochetto & Lentz, P.C. and represent the Defendant herein Kathy Cokus ("Cokus") in this action and in the action pending in the Court of Common Pleas for Bucks County, Pennsylvania, described in Cokus' motion papers as the Bucks County Action. I have personal knowledge of, or have had someone from my office conduct research substantiating, the facts set forth herein.

2. Zeichner, Ellman & Krause's ("ZEK") statement that no "substantive progress" has been made and "no discovery has been exchanged" in the Bucks County Action is disingenuous. In relation to discovery, the following has occurred:

- Octavio Pena ("Pena") served a Notice of Deposition for Cokus, scheduling it for 11/2/07;
- On October 23, 2007, Pena served a Notice of Intent to Serve Subpoena, a procedure required under the Pennsylvania rules, on a third-party, the Bucks County Adult Probation and Parole Department;
- On October 24, 2007, Cokus served her First Request for Admissions and a Request for Production of Documents related to the admissions;
- On October 29, 2007, Cokus served her First Request for Production of

Documents on Pena;

- On October 29, 2007, Cokus served her First Request for Production of Documents Directed to Nathan Schwed ("Schwed") and ZEK;
- On October 29, 2007, Cokus served her First Set of Interrogatories on Pena;
- On October 29, 2007, Cokus served her First Set of Interrogatories on Schwed and ZEK;
- Cokus also served her Second Request for Production of Documents on Pena;
- Cokus also served her Second Request for Production of Documents on Schwed and ZEK;
- On November 11, 2007, Pena served his First Request for Production of Documents on Cokus;
- On November 11, 2007, Cokus served her Second Request for Production of Documents on ZEK;
- On November 5, 2007, Cokus served her Third Request for Production of Documents on Pena;
- On December 4, 2007, Cokus produced document's in response to Pena's Request for Production;
- In addition, Pena has produced documents and answered Requests for Admission; and
- On or about December 5, 2007, Cokus filed a Motion to Compel directed to ZEK for ZEK's failure to produce documents and answer interrogatories.
- On December 7, 2007, Cokus responded to 79 Requests for Admissions propounded by Pena.

3. The *qui tam* action that is the subject of the retainer agreement between ZEK and Cokus was brought in Federal Court in Massachusetts.

4. ZEK's statement that Pennsylvania lacks personal jurisdiction over ZEK

and Schwed is incorrect. ZEK's and Schwed's contacts with Pennsylvania include, but are not limited to, the following:

- ZEK and Schwed drafted the July 16, 2001 retainer agreement with Pennsylvania citizen Cokus.
- ZEK and Schwed represented Pennsylvania resident Cokus in the *qui tam* action.
- While representing Cokus, ZEK and Schwed sent email correspondence and documents to Pena in Pennsylvania.
- While representing Cokus, ZEK and Schwed sent hundreds of emails and documents to Cokus in Pennsylvania.
- While representing Cokus, ZEK and Schwed called Cokus extensively while she was Pennsylvania.
- ZEK and Schwed represented Pennsylvania resident Pena.
- On July 13, 2001, ZEK and Schwed drafted an agreement at Pena's request between Lynch International Inc. ("Lynch") and Pennsylvania resident Cokus, whereby Pena would perform investigative services on the *qui tam* action.
- According to Martindale-Hubbell, two percent of ZEK's practice involves litigation in Pennsylvania.
- Schwed and/or ZEK have purposefully targeted their activities to Pennsylvania and have represented/transacted business with at least the following Pennsylvania residents and Pennsylvania corporations:
- Edwin P. Wilson, **White Deer, Pennsylvania** (incarcerated at Allenwood penitentiary) (Schwed and ZEK represented Wilson through Pena and Lynch International, Inc.);
- National Union Fire Insurance Company of Pittsburgh, **Pittsburgh, Pennsylvania** (ZEK has represented this entity on numerous occasions in various litigation including twice in the United States Bankruptcy Court for the Western District of Pennsylvania in 2004 through the present, *Global Industries Technologies, Inc.*, No. 02-21626-JKF and *North American Refractories Co.*, No. 02-20198-JKF);

- Insurance Company of the State of Pennsylvania, **Philadelphia, Pennsylvania** (ZEK has represented this entity on numerous occasions in various litigation including twice in the United States Bankruptcy Court for the Western District of Pennsylvania in 2004 through the present, *Global Industries Technologies, Inc.*, No. 02-21626-JKF and *North American Refractories Co.*, No. 02-20198-JKF);
- Birmingham Fire Insurance Company of Pennsylvania, **Pittsburgh, Pennsylvania** (ZEK has represented this entity on numerous occasions in various litigation including once in the United States Bankruptcy Court for the Western District of Pennsylvania in 2004 through the present, *North American Refractories Co.*, No. 02-20198-JKF);
- Commerce and Industry Company, **Philadelphia, Pennsylvania** (ZEK has represented this entity on numerous occasions in various litigation including twice in the United States Bankruptcy Court for the Western District of Pennsylvania in 2004 through the present, *Global Industries Technologies, Inc.*, No. 02-21626-JKF and *North American Refractories Co.*, No. 02-20198-JKF);
- AIG Life Insurance Company (Delaware corporation with a principal place of business located in **Pittsburgh, Pennsylvania**)(ZEK has represented this entity on numerous occasions in various litigation including once in the United States Bankruptcy Court for the Western District of Pennsylvania in 2004 through the present, *North American Refractories Co.*, No. 02-20198-JKF);
- and American International Group, Incorporated, (Delaware corporation with a principal place of business located in **Pittsburgh, Pennsylvania**.) (ZEK has represented this entity on numerous occasions in various litigation including twice in the United States Bankruptcy Court for the Western District of Pennsylvania in 2004 through the present, *Global Industries Technologies, Inc.*, No. 02-21626-JKF and *North American Refractories Co.*, No. 02-20198-JKF).

I declare under penalty of perjury that the foregoing is true and correct.

Date:

12/10/07


George Bochetto